

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAGI GINGER,

Plaintiff,

v.

ORLY GINGER,

Defendant.

Civ. No.: 14-5683 (KBF)

**DECLARATION OF
BRYAN D. LEINBACH
IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

STATE OF NEW YORK,
COUNTY OF NEW YORK.

BRYAN D. LEINBACH, pursuant to 28 U.S.C. § 1746, declares the following:

1. I am associated with the firm of Zeichner Ellman & Krause LLP, attorneys for defendant Orly Genger (“Orly”). I make this declaration in support of Orly Genger’s motion for an order: (i) pursuant to Fed. R. Civ. P. 56, granting summary judgment, dismissing plaintiff Sagi Genger’s (“Sagi”) complaint with prejudice and (ii) for such other and further relief as the Court deems just and proper.

2. Attached as **Exhibit 1** is a copy of the Complaint filed in this case. The Complaint attaches an October 30, 2004 letter (the “Sagi Promise Document”) and a November 10, 2004 letter (the “November Document”).

3. Attached as **Exhibit 2** is a copy of the Answer Orly filed in this case.

4. Attached as **Exhibit 3** are copies of several published articles discussing Orly’s artwork.

5. Attached as **Exhibit 4** is a copy of Orly's Second Amended Verified Complaint (without exhibits) dated August 4, 2010 in a case filed in New York County Supreme Court titled Orly Genger et al. v. Dalia Genger et al., Index No. 109749/2009 (the "New York TPR Action").

6. Attached as **Exhibit 5** is a copy of Sagi's Verified Answer dated August 25, 2010 in the New York TPR Action.

7. Attached as **Exhibit 6** is a copy of Sagi's First Amended Verified Answer dated January 9, 2014 in the New York TPR Action.

8. Attached as **Exhibit 7** is a copy of Orly's Verified Complaint (without exhibits) dated January 15, 2008 in a case filed in New York County Supreme Court titled Orly Genger v. Sagi Genger, Index No. 100697/2008 (the "Riverside Case").

9. Attached as **Exhibit 8** is a copy of Sagi's Verified Answer dated February 22, 2008 in the Riverside Case.

10. Attached as **Exhibit 9** is a copy of excerpts from Sagi's July 27, 2012 deposition transcript.

11. Attached as **Exhibit 10** is a copy of a Shareholders Agreement for TPR Investment Associates, Inc. ("TPR") dated as of October 30, 2004.

12. Attached as **Exhibit 11** is a Final Judgment As To Sagi A. Genger filed on May 2, 2006 in an action titled Securities and Exchange Commission v. Lumenis, Ltd., Sagi A. Genger, and Kevin Morano, Case No. 06-3225 (LAK).

13. Attached as **Exhibit 12** is a copy of a Stipulation of Settlement dated as of October 26, 2004 (without exhibits).

14. Attached as **Exhibit 13** is a copy of a Final Arbitration Award dated May 6, 2008 in an arbitration between Arie Genger and Dalia Genger arising from the Divorce Stipulation. The arbitrator awarded Dalia over \$4 million in the arbitration. See Ex. K at 11, 16, 17.

15. Attached as **Exhibit 14** is a copy of excerpts from Sagi's January 16, 2014 deposition transcript.

16. Attached as **Exhibit 15** is a copy of excerpts from Sagi's May 13, 2013 deposition transcript.

17. Attached as **Exhibit 16** is a copy of excerpts from Sagi's March 20, 2014 deposition transcript.

18. Attached as **Exhibit 17** is a copy of a Subpoena dated August 19, 2014 to Carol Schepp (without exhibits).

19. Attached as **Exhibit 18** is a copy of the Response To Subpoena Served By Orly Genger Dated 8/19/14 by Carol Schepp.

20. Attached as **Exhibit 19** is a copy of the Declaration of Marilyn B. Chinitz dated October 9, 2014.

21. Attached as **Exhibit 20** is a copy of a Subpoena dated September 18, 2014 to Marilyn B. Chinitz (without exhibits).

22. Attached as **Exhibit 21** is a copy of a September 24, 2014 letter from Marilyn B. Chinitz.

23. Attached as **Exhibit 22** is a copy of an **October 8, 2014** letter from Sheldon M. Greenbaum.

24. Attached as **Exhibit 23** is a copy of a Subpoena dated September 17, 2014 to Goldman & Greenbaum, P.C. (without exhibits).

25. Attached as **Exhibit 24** is a copy of an email chain between October 15, 2014 and August 26, 2014 between Sagi counsel John Dellaportas, Dentons US LLP attorney Edward Reich and Orly counsel Yoav M. Griver.

26. Attached as **Exhibit 25** is a copy of a Subpoena dated August 26, 2014 to Dalia Genger (without exhibits).

27. Attached as **Exhibit 26** is a copy of the Response to Subpoena to Dalia Genger to Produce Documents dated September 15, 2014. Dalia did not produce any contemporaneous documents showing that the Sagi Promise Document or November Document were ever forwarded or provided to Arie (or his counsel) prior to execution of the Divorce Stipulation. Dalia also did not produce any contemporaneous documents showing that a “clawback” for Dalia’s living expenses was ever discussed with Arie prior to execution of the Divorce Stipulation.

28. Attached as **Exhibit 27** is a copy of Orly’s First Request for Production of Documents from Sagi dated August 15, 2014.

29. Attached as **Exhibit 28** is a copy of Sagi counsel's October 10, 2014 cover letter and attached production of documents and privilege log.

30. Neither Sagi, nor Dalia nor Arie produced any drafts of the Divorce Stipulation that referenced the Sagi Promise Document, the November Document or a "clawback" for Dalia's living expenses.

31. Attached as **Exhibit 29** is a copy of Sullivan & Worecester LLP's privilege log dated October 15, 2014. Sullivan & Worecester LLP inform us that Dalia instructed them to assert a privilege over each of the documents listed on the log.

32. Attached as **Exhibit 30** is a copy of a TPR Board Resolution dated as of October 26, 2004.

33. Attached as **Exhibit 31** is a letter agreement dated October 29, 2004 attaching two Irrevocable Proxies dated October 29, 2004.

34. Attached as **Exhibit 32** is a copy of Orly's Third Amended Supplemental Complaint dated September 29, 2011 (without exhibits) in a case filed in New York County Supreme Court titled Arie Genger and Orly Genger v. Sagi Genger et al., Index No. 651089/2010 (the "New York TRI Action").

35. Attached as **Exhibit 33** is a copy of TPR and Sagi's First Amended Answer to the Third Amended Supplemental Complaint dated April 25, 2013 in the New York TRI Action.

36. Attached as **Exhibit 34** is a copy of a Stock Purchase Agreement dated August 22, 2008.

37. Attached as **Exhibit 35** is a copy of a letter agreement dated August 22, 2008.

38. Attached as **Exhibit 36** is a copy of a Release executed as of September 23, 2008.

39. Attached as **Exhibit 37** is a copy of excerpts from Sagi's January 17, 2014 deposition transcript.

40. Attached as **Exhibit 38** is a copy of a Decision and Order dated January 3, 2013 in the New York TRI Action.

41. Attached as **Exhibit 39** is a copy of a July 23, 2010 decision in a case filed in Delaware Chancery Court with the following citation: TR Investors, LLC v. Genger, 2010 Del. Ch. LEXIS 153 (Del. Ch. July 23, 2010).

42. Attached as **Exhibit 40** is a copy of an August 9, 2010 decision in a case filed in Delaware Chancery Court with the following citation: TR Investors, LLC v. Genger, 2010 Del. Ch. LEXIS 170 (Del. Ch. Aug. 9, 2010).

43. Attached as **Exhibit 41** is a copy of a July 18, 2011 decision of the Delaware Supreme Court with the following citation: Genger v. TR Investors, LLC, 26 A.3d 180, 202-203 (Del 2011).

44. Attached as **Exhibit 42** is a copy of a complaint dated October 4, 2011 in a case filed in Delaware Chancery Court titled Dalia Genger v. TR Investors, LLC et al., C.A. No. 6906-CS (the "Dalia Delaware Action").

45. Attached as **Exhibit 43** are copies of: an Order to Show Cause and TRO dated October 26, 2011; (ii) an Order to Show Cause and TRO dated November 9, 2011; and (iii) an Interim Order dated April 10, 2012 in the New York TRI Action.

46. Attached as **Exhibit 44** is a copy of a So-Ordered Second Amended Stipulation of Discontinuance With Prejudice filed on July 1, 2013.

47. Attached as **Exhibit 45** is a copy of the So-Ordered Stipulation of Discontinuance dated August 30, 2013 in the Dalia Delaware Action.

48. Attached as **Exhibit 46** is a copy of TPR's memorandum of law in opposition to the Orly's motion to dismiss and in support of its cross motion for summary judgment in a case TPR filed in this Court titled TPR Investment Associates, Inc. v. Pedowitz & Meister LLP, Case No. 13-8243 (JFK) (the "Share Proceeds Action").

49. Attached as **Exhibit 47** is a copy of TPR's reply memorandum of law in further support of its cross-motion for summary judgment in the Share Proceeds Action.

50. Attached as **Exhibit 48** is a copy of the April 29, 2014 hearing transcript on Orly's motion to dismiss and TPR's cross-motion for summary judgment in the Share Proceeds Action.

51. Attached as **Exhibit 49** is a copy of a May 15, 2014 decision in the Share Proceeds Action with the following citation: TPR Investment Associates, Inc. v. Pedowitz & Meister LLP, 2014 U.S. Dist. LEXIS 67116 (S.D.N.Y May 15, 2014).

52. Attached as **Exhibit 50** is a copy of a May 19, 2014 letter from Escrow Agent Robert Meister.

53. Attached as **Exhibit 51** is a copy of a Reply Declaration of Sagi Genger dated July 7, 2014 (without exhibits). Neither Sagi nor Dalia have produced any document showing that a draft of the November Document existed before November 10, 2004.

54. Attached as **Exhibit 52** is a November 10, 2004 email between Sagi and Orly.

55. Attached as **Exhibit 53** is the Declaration of David Parnes, Esq. dated May 28, 2014.

56. Sagi has never produced a copy of the November Document with an original signature to Orly or Orly counsel. Orly has retained an ink expert to review the November Document, but Sagi counsel have not yet given the ink expert access to the November Document or the Sagi Promise Document. After cancelling an October 14, 2014 examination of those documents on October 2, 2014, the next date provided by Sagi counsel was October 30, 2014. Attached as **Exhibit 54** is are copies of an October 2014 email chain concerning Orly's ink expert.

57. Attached as **Exhibit 55** is copy of the listing of marital assets.

58. Attached as **Exhibit 56** is a copy of a January 29, 2014 email from Sagi counsel John Dellaportas.

59. Attached as **Exhibit 57** is a copy of a Declaration of Orly Genger, dated June 27, 2014.

60. Attached as **Exhibit 58** is a copy of an October 18, 2004 email from David Parnes, Esq. to Sagi, attaching drafts of the language for a promise document (hereafter, the "Drafts"). No signed version of the Drafts has been produced in this matter.

61. Attached as **Exhibit 59** is a copy of the complaint Sagi filed in the prior action seeking to enforce the November Document.

62. Attached as **Exhibit 60** is a copy of the Declaration of Franklin B. Velie dated September 10, 2014.

63. Attached as **Exhibit 61** is a copy of a check and bank statement Sagi submitted to this court to show he paid \$200,000 to Dalia. The document was previously attached as Ex. H to the Reply Declaration of Sagi Genger dated July 7, 2014.

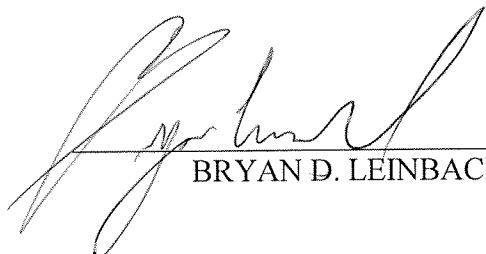
64. Attached as **Exhibit 62** is a copy of the Declaration of Lance Harris.

65. Attached as **Exhibit 63** is a copy of a January 24, 2014 email between Lance Harris and Sagi counsel John Dellaportas.

66. Attached as **Exhibit 64** is a copy of the privilege log provided by Carter Ledyard & Milburn LLP.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 20, 2014.


BRYAN D. LEINBACH